

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \*

UNITED STATES OF AMERICA

v.

CHRISTOPHER CANTWELL,

Defendant.

\* \* \* \* \*

No. 1:20-cr-00006-PB  
September 25, 2020  
1:15 p.m.

TRANSCRIPT OF DAY FOUR OF JURY TRIAL - AFTERNOON SESSION  
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Government: AUSA John S. Davis  
AUSA Anna Z. Krasinski, Esq.  
U.S. Attorney's Office

For the Defendant: Eric Wolpin, Esq.  
Jeffrey S. Levin, Esq.  
Federal Defender Office

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P R O C E E D I N G S

THE CLERK: All rise for the Honorable Court.

THE COURT: First, the defendant has a categorical objection to any instruction on provocation. I understand that objection. Let me briefly explain why I feel compelled to give an instruction on the concept of provocation.

As I've noted, I've struggled during the course of pretrial preparation to understand the defendant's defense. I've repeatedly inquired of defense counsel to ask them to explain the defense so that I could prepare properly. I worked hard to develop a proposed charge that I submitted to the parties well in advance of the trial. I made clear to them when I thought a provocation defense would be needed I believe on the first day of trial, once I heard their opening statement. I submitted a proposed provocation charge which came from the government because the defendant didn't submit any alternative charge.

I then met with counsel at about 5:00 last night and heard proposed changes to the entire charge, including the provocation charge. I made certain changes to the provocation charge at the defendant's request.

I showed up at 8:10 this morning, and I had delivered the proposed charge to defense counsel as modified at 8:00. I came down and talked to the parties about the proposed charge this morning.

1           It is, frankly, a little bit frustrating for me to be  
2       forced to delay the jury while we continue to evaluate an issue  
3       that, frankly, should have been resolved long ago, given the  
4       many opportunities I have given counsel to present this issue  
5       to me. But why I needed to do a provocation charge became  
6       apparent to me in the opening statement, when the defendant  
7       made an opening statement that was obviously crafted as a  
8       direct appeal to a non-existent provocation defense, and at  
9       that point the jury would have been impossibly confused if I  
10      were to instruct without giving any kind of provocation  
11      instruction.

12           The need for it became even more apparent when the  
13      defendant insisted on the introduction of evidence, over the  
14      government's objection, that was minimally relevant for any  
15      other purpose than provocation but that directly addressed a  
16      potential provocation defense. I nevertheless erred on the  
17      side of caution and admitted that evidence, because I've always  
18      been sensitive to the need to allow the defendant a full and  
19      fair opportunity to develop context evidence. But because I  
20      did that, and because that evidence that otherwise wouldn't  
21      have been admissible but for the defendant's insistence in its  
22      minimal relevance for a legitimate purpose, it also carried  
23      with it a potential for an improper purpose, and so I have to  
24      give this instruction over the defendant's objection.

25           Now, I have tried to craft a modified instruction that

1 very closely tracks the defendant's proposal but is in my own  
2 words and tries to address a couple of things. One, I am  
3 sensitive to the need to make sure that there is absolutely no  
4 doubt that the burden of proof remains with the government as  
5 to each element of the charge at all times, that it never  
6 switches to the defendant. I've tried to build that into the  
7 proposed charge in even stronger terms than the defense has  
8 proposed.

9 Second, I'm aware of the context defense, and although  
10 I gave the context instruction earlier in the case, I'm  
11 prepared to repeat it here.

12 So, let me read the proposed instruction, and I,  
13 again, remain open to hearing suggestions from the parties as  
14 to how to improve it.

15 "You have heard evidence that Victim 1 and others have  
16 engaged in behavior that disrupted the defendant's live call-in  
17 radio show. You have also heard evidence that Vic Mackey or  
18 others may have engaged in behavior that disrupted the  
19 defendant's website. You may consider such evidence for the  
20 purpose of understanding all of the circumstances surrounding  
21 the making of the communications at issue in this case,  
22 including, for example, the language, specificity and frequency  
23 of the communications, the context surrounding the  
24 communications, the relationship between the defendant and  
25 Victim 1, Victim 1's response, any previous communications

1 between the defendant and Victim 1, and whether you believe the  
2 person making the communications was serious, as distinguished  
3 from mere idle or careless talk, exaggeration or something said  
4 in a joking manner. You may not consider this evidence for any  
5 other purpose. Remember, the defendant cannot be found guilty  
6 of any charge unless the government proves every element of the  
7 charge beyond a reasonable doubt. That burden never switches  
8 to the defendant. If, however, the government proves every  
9 element of the charge beyond a reasonable doubt, evidence of  
10 provocation, justification or self defense does not negate the  
11 defendant's criminal culpability with respect to that charge."

12 So, I have taken a little bit of the government's  
13 proposed charge, I've taken a large part of the defendant's  
14 proposed charge, and I put it into language that I believe  
15 accurately describes the burden of proof, how this evidence can  
16 be considered and the purpose for which it will not provide a  
17 defense if the government proves every element of the charge  
18 beyond a reasonable doubt.

19 What does the defendant want to say about how I could  
20 improve the charge, understanding your view is I've  
21 categorically erred in giving it and it can't be improved, but  
22 if I ask you for suggestions, telling you I'm going to do it,  
23 what else would you say to me?

24 MR. LEVIN: We have no other suggestions, your Honor.  
25 That's fine.

1 THE COURT: All right. What does the government want  
2 to say?

3 MR. DAVIS: No objection.

4 THE COURT: All right. So, we will incorporate that  
5 into the charge. I'd ask my law clerk to -- is Lorraine back  
6 from her appointment?

7 THE CLERK: She might be.

8 THE COURT: I ask you to see if you can contact her  
9 and ask her to substitute this for the provocation and then  
10 print up four copies of the jury charge, and if she can't  
11 because she's not available, then I'll ask Caroline to do it  
12 for me. Okay? All right.

13 All right. Are we ready to bring the jury in?

14 MS. KRASINSKI: Yes, your Honor.

15 THE COURT: All right. Let's bring the jury in.

16 THE CLERK: Please remain standing for the jury.

17 (The jury entered the courtroom)

18 THE CLERK: Please be seated. This hearing is back in  
19 session.

20 THE COURT: Sorry for the delay. It's on me again. I  
21 apologize. I apologize. We are, though, ready for closing  
22 arguments, so we'll hear the government's closing argument.

23 You can proceed when ready.

24 MS. KRASINSKI: Thank you, your Honor.

25

1 CLOSING ARGUMENT

2 BY MS. KRASINSKI: Ladies and gentlemen, Christopher Cantwell  
3 is guilty of extortion and cyberstalking. He's guilty because  
4 he sent an interstate communication threatening to rape  
5 Mrs. Lambert, and he sent that threat with the intent to get  
6 something he wanted, Vic Mackey's personal information, his  
7 dox. He's guilty because he threatened to try to get Child  
8 Protective Services to destroy Ben Lambert's life by claiming  
9 that Ben Lambert uses LSD and by reporting his involvement in a  
10 white nationalist group to Child Protective Services and to the  
11 FBI. He's guilty of cyberstalking because he engaged in a  
12 campaign intended to harass and intimidate Ben Lambert. He  
13 threatened to dox Ben Lambert, and he did. He publicized  
14 photos of Mrs. Lambert and their three children. He threatened  
15 to call Child Protective Services, and he did. And during this  
16 campaign Chris Cantwell made it clear that he would stop if,  
17 and only if, Ben Lambert gave up Vic's information. Give me  
18 Vic. It's your only out.

19 Chris Cantwell wanted revenge. He wanted revenge on  
20 Vic. He wanted to eliminate a rival, and this was his path to  
21 that information. Chris Cantwell was willing to say or do  
22 anything to get Ben Lambert to give him what he wanted, the  
23 information that he needed to do that.

24 Chris Cantwell's words and his actions were  
25 purposeful, they were manipulative and designed to get that



1 result. And what was the purpose, the result that Chris  
2 Cantwell was seeking? You know this now. Vic Mackey's  
3 information. He wanted to dox Vic Mackey. He told you he  
4 wanted to expose Vic Mackey. Why? He told you he was angry.  
5 He was really angry. He was frustrated. He described to you  
6 the prank calls he was getting into his show, people were  
7 making memes he didn't like, and he believed Vic Mackey was the  
8 ringleader who was organizing this harassment campaign.

9 Both Agent Tongbua testified and Mr. Cantwell  
10 testified about this, that he placed the majority of the blame  
11 on Vic Mackey. And you know that Mr. Cantwell blamed Vic  
12 Mackey and one other person, a guy who went by the pseudonym  
13 Mosin-Nagant, for defacing his website. Chris Cantwell places  
14 the blame for all of that on Vic Mackey. And Mr. Cantwell made  
15 his objective clear. He brought Vic up during the  
16 conversation.

17 And let's have Government's Exhibit 100 up while we  
18 talk about this, because the first time he mentions Vic Mackey  
19 it's all about getting Vic Mackey's information. If you want  
20 to dox Vic, he's a better target, but if you give me fake info,  
21 then your wife is going to have trouble sleeping at night until  
22 she leaves you and takes your kids away, and he repeats his  
23 demand for Vic's dox over and over again. He says on Page 3,  
24 Give me Vic. It's your only out. And then later, on Page 5 of  
25 this he repeats it again, Give me Vic. And close to the end of

1 the conversation, Tell Vic if he gives himself up you can save  
2 your family.

3 In opening the defense laid out a theory that all  
4 Chris Cantwell meant was, Leave me alone, but I want you to  
5 think about that, because to adopt that theory you'd have to  
6 ignore this purpose, you would have to ignore the purpose that  
7 is littered throughout these communications. And,  
8 conveniently, in their opening statement there was no reference  
9 to Vic Mackey at all. But you've seen the messages, and you  
10 know the history. It's always been about Vic Mackey, even back  
11 in March of 2019, months before the exchange that brings us  
12 here today, and you see that in Defense Exhibit B-20. When you  
13 get doxed it's all because of Vic. Remember that.

14 And to adopt the defense theory, you'd also have to  
15 ignore all of the evidence that shows what Chris Cantwell  
16 really thought about Ben Lambert, that he wasn't after Ben  
17 Lambert, but Ben Lambert was the one who could give him what he  
18 did want. He said this during his call to the Missouri Child  
19 Abuse and Neglect Hotline. And let's listen to a small portion  
20 of that call. The call is in evidence as Government's Exhibit  
21 103, but let's listen to just a very small portion of that now.

22 (Audio recording played)

23 MS. KRASINSKI: I've had problems with these other  
24 members of the group. This isn't about Ben Lambert. And Mr.  
25 Cantwell again explains this in his call with Katelen Fry, his

1     confidante, his friend, and this is the call that he recorded  
2     back in December of 2019, back before any charges, back before  
3     his arrest, and let's listen to that now. It's Government's  
4     Exhibit 109.

5                     (Audio recording played)

6             MS. KRASINSKI: Vic Mackey is the hostile actor. He  
7     doesn't know how conscious of it Cheddar was. He doesn't know  
8     how conscious of it Ben Lambert was. And he explained it in  
9     his messages to Ben Lambert back in Government's Exhibit 100,  
10    and what he writes is, And I don't care if it's you causing the  
11    trouble. You're the one who's going to suffer, because you're  
12    the one who I can get. And you know that by this point Ben  
13    Lambert wasn't causing the trouble. He sat there, and he  
14    admitted to you that he had made prank calls, that he had made  
15    memes. He admitted all of the things that he had done to get a  
16    rise out of Mr. Cantwell. But he also told you in March of  
17    2019, after Mr. Cantwell threatened to dox him the first time,  
18    that he had left him alone, and the evidence bears that out,  
19    and Mr. Cantwell sat there, and he told you today that he had  
20    not seen anything associated with Cheddar, with Ben Lambert's  
21    pseudonym, for three months before this exchange, and if you  
22    look at the phone records, Defense Exhibit I-2-B, and you look  
23    at the last page, Mr. Lambert's cell phone didn't call in to  
24    Radical Agenda for months before this exchange.

25             Now, let's talk about how serious Mr. Cantwell was,

1     how much he wanted Ben Lambert to believe him. This was a  
2     multi-pronged attack. Chris Cantwell made a number of threats,  
3     a threat to dox, a threat to report to CPS, a threat to report  
4     to the FBI, and a threat to rape. And look at the language he  
5     uses, and right now I'm specifically talking about this  
6     language directed at Mrs. Lambert. It's specific. It is  
7     directed at a particular person. It is coupled with all of the  
8     other threats, two of which he followed through on, and this is  
9     after Mr. Cantwell sent that message of just his street  
10    address. Mr. Cantwell knows where they live; he could show up  
11    any time. And he follows it with a picture of Mrs. Lambert.  
12    He knows who his target is; he knows what she looks like.

13           And Mr. Cantwell testified and he told you he cares  
14    about language, and he's precise with his language, and with  
15    each of these messages he had time to think, he had time to  
16    craft his message, he had time to type it out, he had time to  
17    consider whether to send it, and he was careful with his  
18    language here. He told you he wanted to send something that  
19    was profoundly unpleasant.

20           Now, he told you that, while he cares about language,  
21    he's not always careful with his language, and what happens  
22    when you're having a conversation face-to-face with someone?  
23    This wasn't a bar fight. This wasn't two people screaming at  
24    each other. These are written communications. He had time to  
25    deliberate, he had time to come up with exactly what he wanted

1 to say, type it out and send it.

2 Mr. Cantwell wants you to believe that this rape  
3 threat was some impassioned response to a threat to his former  
4 girlfriend, Katelen Fry, to Peach. But compare the two  
5 statements. Mr. Lambert wrote, Guess that means you don't care  
6 what happens to her either. There is no specific language in  
7 there. Mr. Lambert doesn't say he is going to do anything to  
8 her. He doesn't say he's going to send anyone else to do  
9 anything to her. He certainly doesn't use the type of  
10 language, the type of sexual violence and sexual imagery in Mr.  
11 Cantwell's response. Mr. Cantwell's response is the opposite.  
12 It's active, it involves Chris Cantwell, it involves a specific  
13 person, Mrs. Lambert, and it involves their young children: If  
14 you don't want me to come and fuck your wife in front of your  
15 kids... It is specific and it is direct.

16 Now, he wants you to think that there is a reference  
17 to cucking, somehow that he would be more satisfying to her,  
18 that doing this in front of her children would somehow satisfy  
19 her in a way that Mr. Lambert couldn't. But use your common  
20 sense and look at this language. This isn't talking about some  
21 satisfying sexual encounter. This is rape, and it's talking  
22 about sexual violence against a woman in a way that would also  
23 traumatize her children.

24 He also talked about fantasy violence, but there's  
25 nothing fanciful about this. Fanciful is the refuge of the

1 defendant who's now been charged with a threat. He has nowhere  
2 else to go but to try to dismiss this as fanciful. But here's  
3 where it's not. It's focused on a specific individual, it's  
4 coupled with threats that Mr. Cantwell actually carried out,  
5 and it's coupled with a demand for something: Give me Vic,  
6 it's your only out.

7 And as you're thinking about whether or not he  
8 intended this statement to reflect violence, think about his  
9 previous statements on doxing, that it's helpful to think of  
10 doxing as a form of violence. Do you really think that he  
11 intended his threat to dox, to convey some sort of form of  
12 violence, but he didn't intend for this statement to convey a  
13 form of violence? No. That's not plausible. He testified  
14 that he has two incel listeners, and he testified that they're  
15 pathetic. He's trying to make his later statements, that, One  
16 of my incel listeners would love to give her a baby, somehow is  
17 less ominous than it really was. And then he told you, Well, I  
18 only thought incel listeners were dangerous sometime after I  
19 sent this exchange. But then you heard that well before this  
20 exchange he had written an article about a number of people  
21 that were identified as mass murderers and were incels.

22 The statements weren't a joke. There's zero  
23 entertainment value. There's no audience. It's not idle talk.  
24 He carried out some of his threats. It's not a political  
25 statement, it's not exaggeration. It was designed and planned

1 to get something, to get Vic's information.

2 And think back to Mr. Cantwell's testimony. Think  
3 back to what he said about Katelen Fry. This is someone he  
4 trusts, someone he asks to marry him, someone he confides in,  
5 and he tells her about what he meant, and we're going to play a  
6 portion of Government's 105.

7 (Audio recording played)

8 MS. KRASINSKI: I left that out there. I didn't say  
9 it; I implied it. Mr. Cantwell also wants you to believe that  
10 this is just the way these two talk to each other, this is  
11 normal within their community. But you've heard from people  
12 within that community. Both Ben Lambert and Paul Nehlen  
13 testified about this. They talk about violence generally,  
14 there's no denying that, but going after someone's spouse  
15 crosses a line, and you know, based on Mr. Cantwell's reaction  
16 after making these statements, that this crossed a line even in  
17 their community. He told you he became worried after his tech,  
18 Ryan, told him not to blackmail people. And then you've heard  
19 Ms. Fry's reaction to it. People within his own community  
20 thought that this crossed the line.

21 And you know that trash talk is normal in certain  
22 contexts. For example, trash talk is normal in sports, right?  
23 Michael Jordan trash-talked Patrick Ewing in the Nicks, but he  
24 didn't say, Throw the next game or I'll fuck your wife.  
25 There's a difference. And you have all of the communications.

1 You can see the foul words that they sling back and forth at  
2 each other, but there is nothing between these two people when  
3 they're talking that comes close to this threat of sexual  
4 violence.

5 Now, I want to be clear, in America everybody has the  
6 right to their beliefs, even despicable beliefs. We have a  
7 First Amendment, and for better or worse people have the right  
8 to express reprehensible beliefs. There's a difference to  
9 making appalling, racist statements on a podcast no matter how  
10 offensive and private threats issued with the purpose of  
11 getting something.

12 Now, I'm not here to condone Ben Lambert's involvement  
13 in the Bowl Patrol, I'm not here to condone his personal  
14 beliefs, but even people who believe or say appalling things  
15 can be victims of crime, and the fact that Ben Lambert  
16 expressed these beliefs under a pseudonym is what made him the  
17 target. It's precisely why Mr. Cantwell chose him as a victim.  
18 It's why Mr. Cantwell believed Ben Lambert could give him what  
19 he wanted. Mr. Cantwell wasn't going to be able to get Vic  
20 Mackey's identity from a Boy Scout; he could only get Vic  
21 Mackey's identity from someone else within the Bowl Patrol.  
22 And the fact that Ben Lambert used a pseudonym, that's what  
23 gave Mr. Cantwell leverage, especially because Chris Cantwell  
24 knew that Ben Lambert had a family, had kids and had something  
25 to lose.



1           Now, we've also seen that Mr. Cantwell uses racial or  
2 anti-Semitic slurs, but, again, I want to be very clear, this  
3 is not a prosecution about racial or anti-Semitic beliefs.  
4 It's not a referendum on whether or not it's good or bad to  
5 expose the identity of someone who holds these beliefs. This  
6 is a prosecution of Christopher Cantwell because he tried to  
7 use Ben Lambert's racial and anti-Semitic beliefs as a weapon  
8 to get something he wanted, because he threatened to fuck Pam  
9 Lambert in front of her children unless Ben Lambert gave Chris  
10 Vic Mackey's identification, because Chris Cantwell began to  
11 carry out some of his threats when Mr. Lambert didn't give in.  
12 He did publicly post the Lamberts' identifying information,  
13 their address, their photographs, their minor children's  
14 photographs without their consent, without their permission,  
15 all because Mr. Cantwell knew it could result in terrible  
16 consequences for them. And he knows this. Mr. Cantwell  
17 understands this. He's candid about it when he talks to his  
18 friends and his confidantes. He explained it to Ms. Fry again  
19 back in December of 2019, and we're going to play a very small  
20 portion of Government's Exhibit 106.

21                           (Audio recording played)

22           MS. KRASINSKI: And we won't play the jail calls now,  
23 but you have both of them, Government's Exhibit 111 and 110.  
24 He explained it to his on-and-off-again girlfriend, Ingrid Dean  
25 that he's essentially guilty of Count Two, of sending an

1 interstate threat to injure reputation, and he explained that  
2 it's not legal to do what he did to his friend, Hannah  
3 Pleasant.

4 And you can think about everything he saved on his  
5 devices. That's consciousness of guilt. Immediately after  
6 their conversation ended he took screenshots of it. He wanted  
7 to keep a record of the conversation. And yet, despite this,  
8 when Special Agent Tongbua met with Mr. Cantwell, Mr. Cantwell  
9 said he didn't keep any record of these communications. He was  
10 open and transparent about so many things. Why not just say,  
11 Yes, I still have records of these communications? Why lie?  
12 He took the screenshots, but that's not what he told the FBI.

13 Now, I want to take a few minutes to outline the  
14 criminal charges. You'll hear the judge instruct you about the  
15 essential elements of the crime charged here, and the essential  
16 elements basically become your checklist as you're  
17 deliberating. They're questions of fact that each of you and  
18 collectively you all have to decide that the government has  
19 proved beyond a reasonable doubt. So, I just want to go  
20 through your checklist for you.

21 Count One charges that Christopher Cantwell sent  
22 extortionate interstate communication, and there are three  
23 essential elements to that: that he knowingly transmitted a  
24 communication in interstate commerce; that the communication  
25 contained a threat to injure the person of another; and that

1 the defendant transmitted the communication with the intent to  
2 extort something of value from any person.

3 Count Two charges that the defendant, Christopher  
4 Cantwell, sent a threat to injure the property or reputation of  
5 another, and there are three essential elements to that count  
6 as well: first, that he knowingly transmitted a communication  
7 in interstate commerce; second, that the communication  
8 contained a threat to accuse another person of a crime or to  
9 injure the reputation of another person; and, third, that the  
10 defendant transmitted the communication with the intent to  
11 extort something of value from another person.

12 And, finally, Count Three charges that Mr. Cantwell  
13 engaged in cyberstalking, and there are four essential elements  
14 of that: first, that Mr. Cantwell used the facilities of  
15 interstate commerce, including an electronic communication  
16 service or system; second, that he used that electronic  
17 communication service or facility in interstate commerce to  
18 engage in a course of conduct; and, third, that while engaging  
19 in that course of conduct Mr. Cantwell acted with the intent to  
20 injure, harass or intimidate the victim; and, fourth, that  
21 Mr. Cantwell's course of conduct placed the victim in  
22 reasonable fear of serious bodily injury to his wife, caused  
23 substantial emotional distress to him, or would reasonably be  
24 expected to cause substantial emotional distress either to him  
25 or his wife.

1           Now, you know that the messages were sent from  
2       Mr. Cantwell here in New Hampshire to Mr. Lambert in Missouri.  
3       You know that many of them were sent using the Telegram  
4       messenger app, and you also know that when Mr. Cantwell  
5       followed through on his threat to call Child Protective  
6       Services he picked up the phone from here in New Hampshire and  
7       he called Missouri. So, we know that he transmitted these  
8       communications in interstate commerce and that he used an  
9       electronic communication service or other facility of  
10      interstate commerce.

11           Now, both Counts One and Two require that Mr. Cantwell  
12      had transmitted the communications with the intent to extort.  
13      He wanted something. You know he wanted something. You know  
14      he wanted it badly. Vic Mackey's information was worth  
15      something to him, it was valuable to him, and you'll hear the  
16      defendant instruct you on what a thing of value is, that it  
17      doesn't need to be a tangible thing. The thing of value as  
18      you're evaluating whether or not Mr. Cantwell had the intent to  
19      extort something of value was information -- knowledge is  
20      power -- Vic Mackey's information.

21           Now, as it relates to Count Two, that the  
22      communication contained a threat to accuse another person of a  
23      crime or to injure the reputation of another person,  
24      Mr. Cantwell has admitted that to you. He told you that when  
25      he said he was going to dox Mr. Lambert, he told you that was a

1 threat. He told you that he is careful what he describes as a  
2 threat, and he called that a threat, and he told you when he  
3 was talking about calling Child Protective Services that that  
4 was a threat. He's told you that he threatened to injure  
5 Mr. Lambert's reputation, and he told you that he threatened to  
6 accuse Mr. Lambert of a crime.

7 And his statement about Mrs. Lambert we've talked  
8 about. It was also a threat, and the important thing here is  
9 that Mr. Cantwell intended it to be perceived as a threat. It  
10 doesn't matter whether or not Mr. Cantwell ever actually  
11 intended to travel to Missouri to carry it out. And you'll  
12 hear His Honor instruct you that, while the government has to  
13 prove that Mr. Cantwell intended to issue a threat, a serious  
14 statement expressing an intent to injure, a statement that  
15 under the circumstances would cause apprehension in a  
16 reasonable person, His Honor will instruct you that it is not  
17 necessary to prove that he actually intended to carry it out.

18 Apprehension in a reasonable person in Mr. Lambert's  
19 position, when you're looking at that, I ask you to use your  
20 common sense. Would a reasonable person in his position  
21 receiving these messages along with his address, along with  
22 photos of his family, along with the other threats that  
23 Mr. Cantwell ultimately did follow through on, perceive it as a  
24 threat? Yes, especially because Mr. Cantwell followed it up  
25 with an ultimatum: Give me Vic, it's your only out, and then

1 he looped back to this theme again later. He wanted to think,  
2 Well, it might not be me, maybe one of my incel listeners would  
3 come and give her another baby, one of my incel listeners would  
4 like to do it.

5 And you know that Mr. Lambert perceived it that way.  
6 He told you that he started driving his wife to work for a bit  
7 after this. He told you he contacted his attorney to talk  
8 about what to do. He told you that he called Paul Nehlen.  
9 Paul Nehlen told you that Mr. Lambert considers him a fatherly  
10 figure. And Mr. Lambert told you that, look, he thought the  
11 chances were low that Mr. Cantwell would actually come out and  
12 do it, but he didn't know for sure, because, as Paul Nehlen  
13 told you, when Ben Lambert received all of these messages his  
14 reaction was, Chris Cantwell's insane. He might not do this,  
15 but I don't know what he's going to do.

16 And Mr. Cantwell engaged in, in relation to the  
17 cyberstalking count, a course of conduct, two or more acts.  
18 Again, he threatened to dox. He did dox. He threatened to  
19 call Child Protective Services. He did that. He made  
20 Mr. Lambert fearful for his safety, for his wife's safety, for  
21 his children's safety by his messages and his actions.

22 And Mr. Lambert suffered substantial emotional  
23 distress. You saw how this is impacting his life. Now, again,  
24 and I want to be candid, you might not feel sorry for him. You  
25 might think it's not a bad thing for his attitudes to be

1 exposed, but that's not the question. The question is whether  
2 or not the government has proved beyond a reasonable doubt that  
3 he suffered substantial emotional distress, and after seeing  
4 him testify and break down when he was talking to you about how  
5 he cannot be a hockey dad, the hockey dad that he wanted to be,  
6 you know he has. You can think about how Mrs. Lambert would  
7 have reacted to this, whether or not Mr. Cantwell's conduct  
8 would reasonably be expected to cause substantial emotional  
9 distress to her. How would she have reacted to seeing those  
10 messages?

11 Ladies and gentlemen, you have seen all of the  
12 evidence, the defendant has had a fair trial, and the evidence  
13 shows that the defendant is guilty beyond any reasonable doubt.  
14 I ask that after you go into the jury room, have a chance to  
15 review all of the evidence, that you find Mr. Cantwell guilty  
16 on all counts.

17 THE COURT: Thank you, Counsel. We'll take just a  
18 moment to disinfect, and then we'll hear the defense's closing.

19 (Pause)

20 THE COURT: Thank you. Mr. Wolpin, you can proceed.

21 MR. WOLPIN: May I take a moment, please?

22 THE COURT: Yes.

23 CLOSING ARGUMENT

24 BY MR. WOLPIN: Chris responded angrily to someone he knew took  
25 a lot to shock. It was over the top, it was obscene, but Chris

1 did not make a serious statement expressing an intent to  
2 injure, and it was not tied to a thing of value. He is not  
3 guilty of making an extortionate threat. He did not attempt to  
4 cause to this particular person under these particular  
5 circumstances, which are unique, and we will discuss that more,  
6 substantial emotional distress. Chris Cantwell is not guilty  
7 of cyberstalking, and he is not guilty of reputational  
8 extortion.

9 The Bowl Patrol was an anonymous, nebulous group. It  
10 reveled in mocking Chris, interrupting him, posting pornography  
11 on his website, calling him a snitch and posting his address  
12 online. Ben Lambert was a troll, self-acknowledged troll, a  
13 troll who acts with the intent of causing emotional distress  
14 and then repeats it over and over again to cause that distress  
15 to compound. The number one rule of trolling is don't feed the  
16 trolls.

17 And what is obvious to see about Chris is it's easy to  
18 get a reaction out of him. Why is he the target? Because when  
19 they go after him he goes over the top. That's fun to see.  
20 That's the joy of trolling. That's why you troll, is to get  
21 the reaction. They know how Chris reacts. They know that when  
22 he reacts he says things that are outrageous but not  
23 necessarily dangerous, and Chris had just enough notoriety that  
24 taking him down had a little bit of extra pleasure.

25 They felt safe doing this to Chris because they knew



1     who he was. When you choose to bully someone, you don't choose  
2     to bully the person who can hurt you back. You choose to bully  
3     the person who you believe is weak, who you believe is just  
4     bluster. That's the target of bullying. That's why they go  
5     after Chris.

6             Now, Ben Lambert may be a really wonderful person in  
7     his family life, in his community, at home. If the internet  
8     had never been invented he might have lived a pretty normal,  
9     wonderful life. But for some people the internet is a drug, is  
10    an addiction. It takes you to dark places and emboldens you to  
11    say things you would never say in person. It allows you to  
12    worship mass murderers and egg them on, because it's online.  
13    It emboldens people to say things that are extreme and over the  
14    top, using language they wouldn't use in their normal life.  
15    You need to think about the words in this case in that context,  
16    that understanding that these two men live much of their lives  
17    online in a rather unhealthy and abnormal space.

18            Now, it's come up a number of times that the  
19    interaction in this case happened in a private sphere rather  
20    than in this public performance element, for example, their  
21    podcasts. However, it was telling then when Mr. Lambert was on  
22    the stand and he was asked about a conversation he had with a  
23    friend of his in Florida on a jail call that was private, that  
24    wasn't to be publicly distributed, it was a phone call between  
25    friends. And we talked about why he was laughing about mass

1 murder with that person, if it wasn't a public performance, if  
2 it wasn't a joke. And his answer was, The lines get blurred.  
3 I'm not even sure who I am when I'm in that call. Am I Cheddar  
4 Mane, Mr. Machine Gun, or am I Ben Lambert, the father? The  
5 lines among these people are blurred as to who they are, when  
6 they can say what they say, and what that means. That is not  
7 normal. That is not the culture most of us live in on a daily  
8 basis, but when the judge instructs you on the law, you will be  
9 told you can consider these surrounding circumstances when you  
10 evaluate the words that were said in this case, and, in doing  
11 so, you must consider this context.

12 Now, to start with the first count, the first count of  
13 extortionate interstate communications, it requires that the  
14 communication contain a threat to injure the person of another.  
15 A threat is a serious (indicating) statement expressing an  
16 intent to injure another person. It also requires that that  
17 threat, if you were to find that was a statement that's of  
18 serious purpose, that that be tied to extort this thing of  
19 value. The government has not met its burden as to this charge  
20 on either of those two elements.

21 As to that first question, was this a serious  
22 statement of an intent to injure, you've heard from a number of  
23 people. You've heard from Chris, himself, over and over again.  
24 As you've seen, Chris likes to talk about things. He likes to  
25 record himself talking about things. He's talking about things

1 from the jail. He's talking about things with Katelen Fry.  
2 He's talking about things with the police. In each instance he  
3 understands that the CPS thing may be a problem, that he did  
4 not see this as a serious statement. And the statement that is  
5 in the actual charge is, So, if you don't want me to come and  
6 fuck your wife in front of your kids, then you should make  
7 yourself scarce. Give me Vic, it's your only out. That is the  
8 statement in this charge, not the incel listeners. That's not  
9 the statement he's charged with, and yet you saw, when Katelen  
10 Fry addressed with him, What's going on, that's what he thinks  
11 in his head might be the thing that's the problem, not the  
12 thing that he's actually charged with.

13 When you consider whether this was serious, you can  
14 consider the time it took for him to come to the decision to  
15 make the statement. The government made a point of pointing  
16 out that the first two contacts of Chris were a full half an  
17 hour apart, and he had all kinds of time to think about it.  
18 The statement about the wife comes within two minutes of  
19 Mr. Lambert's statement about Peach. Now, it's probably  
20 evident from Chris's testimony that that is someone he cared  
21 about, that is someone he asked to marry him, that is someone  
22 that the mere mention of her name brings tears. The government  
23 can play that statement down of Mr. Lambert and say it wasn't  
24 specific or clear, but when you talk about something happening  
25 to somebody, the ambiguity is what makes it scary, because you

1 don't know what that means; you don't know what that will  
2 result in. And so, Chris comes back and returns within two  
3 minutes with the meanest thing he can think to say, which is  
4 outrageous, that's, In front of your children. It's over the  
5 top. It's exactly the kind of reaction that Cheddar Mane has  
6 watched Chris give to their prank calls for months. It was not  
7 a serious statement.

8           You can look to Ben Lambert's response. He doesn't  
9 instantly respond to that with something about the threat.  
10 He's back onto something else and then goes on to other things.  
11 You can consider what he does over the next number of hours and  
12 days. Now, whether it's Eastern Standard Time, Central  
13 Standard Time, 9:42, 8:42, that's not what matters. What  
14 matters is within that evening it's posted online for the world  
15 to see, this thing that is supposedly making him afraid. It's  
16 posted with a naked picture of Chris on top, and it's available  
17 for all the world to see, because when you're a troll the  
18 purpose of getting the reaction is so you can show others what  
19 you've done. That's the badge, that's the honor. That goes  
20 up, and Chris starts getting in his harassment. Cheddar Mane  
21 knew that was going to happen. The second that goes online the  
22 rest of the world's going to be flooding Chris with this, that,  
23 boof meth, or whatever. Only then does Chris post the picture;  
24 only after that does he call CPS. You can go back and see that  
25 after this Mr. Lambert had his own post online calling Chris a

1 fed, snitch, nigger, kike. Why that language? Because that's  
2 just the standard language, because that is the universe these  
3 two men live in. What does he do? He calls in the show. Why  
4 does he call Chris's show? It's not going to make his life  
5 better. He calls Chris's show because that's the troll, that's  
6 the entertainment, that's the process, because it was not a  
7 serious statement.

8 We have or had Paul Nehlen here to testify briefly  
9 about this. He told the FBI three weeks ago he couldn't even  
10 say whether he had a phone call with Ben Lambert, and then he  
11 got up on the stand and told you all the details of the call.  
12 He was visited by or spoke with the FBI in preparation several  
13 weeks ago, and what's the reaction? Take down everything on  
14 his website. Why? Because what is his website full of? The  
15 same stuff against Chris Cantwell. Who is his friend? Ben  
16 Lambert. What is his response? Bully back, because that's how  
17 this works, not go to the police, not take this as a serious  
18 statement.

19 We have a screenshot that Ben Lambert recently  
20 produced of an inexplicable text message. In that message he's  
21 typing stuff in response to texts that haven't happened yet.  
22 That's in reference -- You referenced my kids. Chris hadn't  
23 referenced his kids. He can't explain what that means, why  
24 that happened, but he felt a need to give something more to  
25 show that this was serious.

1           You've seen the fancy technology the FBI has. They  
2     can take a phone, they can figure out the date it was created,  
3     the date it was modified. They did all of that to Chris's  
4     stuff. They don't do that to Cheddar Mane when he gives them  
5     this message that makes no sense. Who did he send it to? Why  
6     is that person not here explaining that they actually received  
7     that? Why is he taking a screenshot -- not a screenshot, which  
8     he clearly knows how to do, but he's taking another camera to  
9     take a picture of it rather than a screenshot, because before  
10    he comes he recognizes that it wasn't a serious statement.

11           We have a screenshot of a text to his lawyer  
12    (indicating). You can take a look at that. That's Steve  
13    (indicating). How do we know it's Steve? Because the text  
14    says Steve. Who is Steve? No idea. Is there a lawyer named  
15    Steve in Missouri? Possibly. Did he speak with a lawyer? Who  
16    knows? Where is the lawyer who got the text? What's his name?  
17    Why isn't that image looked at by the FBI? They just took it  
18    and gave it to you. That's not what they did with all of  
19    Chris's stuff.

20           And Lambert's statements that he took this all  
21    seriously are simply not credible. He says he was fearful and  
22    he got a game camera to put outside his house. The FBI shows  
23    up in October, four months later, and no SD card. Did he even  
24    put a game camera up at his house? The FBI is at his house.  
25    Do they check to see if that's true? No. Who needs to? He

1 says he started driving his wife to work some. Is that true?  
2 We have no idea. What did he tell her? He said, I didn't tell  
3 her there was any threat against her, so suddenly he's taking  
4 her to work all the time? What's the explanation? Did that  
5 happen? We don't know. What Ben Lambert said he did is simply  
6 not credible.

7 Now, let's take a little step back and ask the  
8 question how we even got here in court today. These guys have  
9 this thing over the internet. It ended. No one called the  
10 police. So, why are we here? How did we get here? We got  
11 here because Ben Lambert posted it online, which I guess is his  
12 right to do so, not a problem. We get here because the FBI,  
13 someone is monitoring the BowlCast website on Telegram. Why  
14 are they doing that? Because they're terrorists. So, they see  
15 it. No one's reported a crime to them. And they make a  
16 decision that, This is what we're going to pursue, that we take  
17 this seriously, that this is a serious threat in our opinion.  
18 And so, they go to Missouri. They meet with Chris first,  
19 because, as you've heard, Chris will meet with the law  
20 enforcement at the drop of a hat. But then they go to  
21 Missouri, and what has Mr. Lambert said about that experience?  
22 The start of the interview is, We take this threat seriously.  
23 Your family is in danger. We are, quote, not letting it go.  
24 Does that tell you what you're supposed to say? I took it  
25 seriously. He knows what they want to hear, because they've

1 told him what they want to hear. You'd ask, well, why did he  
2 give it to them, then? What did he tell his friend? They were  
3 holding Bowl Patrol over my head to get my cooperation. In the  
4 same way that some have the power to reveal the identity of a  
5 person, so does law enforcement have the power to reveal the  
6 identity of a person. And so, he said it was serious. He knew  
7 what they wanted to hear. He knew they were holding Bowl  
8 Patrol over his head. This was not a quest to find out what he  
9 actually believed. This was an effort to prosecute Chris  
10 Cantwell.

11 And we understand why the FBI might be monitoring  
12 Chris Cantwell. It's the same reason they're monitoring the  
13 BowlCast. That should be their job, but this isn't something  
14 where they put up pole cameras outside his house and caught him  
15 doing a crime. This is something they found on the internet  
16 and went to this guy and told him what they wanted to hear. He  
17 told his friend that, and agreed he told his friend, that they  
18 basically said that, I was going to have CNN on my doorstep if  
19 I didn't help them. He'd be doxed. So, he helps them, and he  
20 says it's serious, and he takes them up on that offer.

21 Now, what's interesting about that is he has a  
22 conversation with his friend in Florida after that about  
23 doxing, and he says to his friend, Really, it's not all that  
24 serious. Because what did Chris do? Chris posted a picture of  
25 his wife on a tiny, fractional corner of the internet that



1 normal people are never going to go to, not even the name, and  
2 the government asked him and he responded in tears as to what  
3 happened, but the government didn't ask him when. When could  
4 you not coach your hockey team? Is it because of Chris's post  
5 on the internet, or is it because of the decision to bring this  
6 charge? And so, if Cheddar Mane didn't take it seriously --  
7 excuse me -- if Ben Lambert didn't take it seriously before, he  
8 does now.

9 Now, the second part of that extortionate threat is it  
10 requires that there be an intent to extort something of value  
11 from a person that is tied to the communication. You will see  
12 and have seen, more times than maybe you want to, the  
13 communication between these two men. In that communication he  
14 says not, Give me Vic. He says, Make yourself scarce. That is  
15 the, Leave me alone. It's not for another half an hour, when  
16 he's off doing other things, and he comes back to his thought  
17 that you get, You give me Vic. You need to consider that time  
18 difference. The statement about the wife is simply not tied to  
19 an intent to extort, and if that is the case, then he is not  
20 guilty.

21 We're going to talk next about the cyberstalking  
22 charge. The cyberstalking charge requires conduct that would  
23 be reasonably expected to cause substantial emotional distress  
24 to a person. You must consider whether in light of the  
25 evidence presented in this case a reasonable person in the same

1 or similar circumstances... So, again, what are you being told  
2 by that? This is not abstract people. This is not a question  
3 of whether a doctor or a judge or a construction worker or  
4 someone who's outside of this community would feel that  
5 distressed. The question is specific to this person in this  
6 circumstance.

7 This was someone who spent their life obsessing about,  
8 joking about mass murder, who knew the risk that he would be  
9 doxed, because they essentially all get doxed. You've heard  
10 all their names in here. It's almost inevitable.

11 Now, Chris certainly testified that he intended to  
12 cause discomfort, but in these particular circumstances, with  
13 this particular individual, his intent was not substantial  
14 emotional distress. Consider what you have learned about the  
15 culture of doxing in this case. You saw the FBI meme of Chris.  
16 You saw that Chris's address was posted above. That is sort of  
17 a double whammy. So, here in the world is where this guy  
18 lives, and, B, he's a fed, snitch, rat, which, as you know, is  
19 not something that is a favorably looked upon characteristic.  
20 You know that the person that Mr. Lambert chose to go to to  
21 talk about his issue with doxing was someone who doxed  
22 somebody. You're going to read Chris's article that they have  
23 cited for you. The article they cited for you is about Paul  
24 Nehlen choosing to dox another person in the movement. That's  
25 his father figure. That's his confidante for this. This is a

1 universe and a world that they were a part of. Remember he  
2 told his friend, Doxing was really no big deal. In this  
3 circumstance, in this case, there was not substantial emotional  
4 distress.

5 Now, you've heard from Chris Cantwell. You've seen in  
6 a courtroom he struggles not to use a swear word. They knew  
7 this guy. They knew how he spoke. They knew they riled him  
8 up. They did it because they could. They knew when he said  
9 something as outrageous as, Sex with your wife in front of your  
10 children, that it was not serious. They knew it. Chris knew  
11 it. It is the government's burden to prove to you Mr. Cantwell  
12 is guilty beyond a reasonable doubt. It is a heavy burden,  
13 heavy burden on purpose, because this is criminal law.

14 And so, when you consider all of this evidence, it's  
15 not a question of possibly or maybe; you need to be convinced  
16 of each of the elements beyond a reasonable doubt. When you  
17 review that evidence, when you consider whether this was a  
18 serious threat in this context, when you consider whether this  
19 was extreme emotional distress in -- excuse me -- substantial  
20 emotional distress in this context, Chris Cantwell is not  
21 guilty. Thank you.

22 THE COURT: Thank you, Counsel.

23 Again, we need to disinfect and brief rebuttal from  
24 the government.

25 (Pause)

1 THE COURT: Okay. Mr. Davis.

2 REBUTTAL CLOSING ARGUMENT

3 BY MR. DAVIS: The defendant says that giving me Vic was an  
4 afterthought from the threat to rape Mrs. Lambert. Let's look  
5 at Exhibit 100 maybe one more time. What happened at the  
6 beginning of all this? What do we know now? Well, we know we  
7 got the initial salvo at 9:00 on this one, 9:00 Eastern, and  
8 then the road is, the street address is left there, and Ben  
9 Lambert is definitely upset now, and he's worried, and he's  
10 wondering what to do, and so for the next four and a half hours  
11 we see his responses.

12 But what's going on right there? Well, we know now  
13 from Mr. Cantwell's testimony what was going on. What's going  
14 on is that Mr. Cantwell has got photographs of the family, and  
15 he's industriously taking time to blur out the faces of  
16 Mr. Lambert's family in Missouri and then to post those  
17 blurred-face photographs in the proud white folk channel, and  
18 assuming that Mr. Lambert is going to find out about that or  
19 see that, and he's setting all of that up, and that takes some  
20 effort, and it takes some time, and it takes some patience, but  
21 he's got all of that, and that's what he does. That's what's  
22 happening right then.

23 And so, the hours go by, and it's almost 4:00 in the  
24 morning Mr. Cantwell's time, and he still hasn't heard  
25 anything, and then he talks about getting a fucking life.

1 Maybe he goes to bed then. And at 2:13 p.m. the next afternoon  
2 Mr. Cheddy Blac says, I haven't given it any thought, and it  
3 was an honest mistake. Seriously, man, I couldn't care less  
4 about what you're trying to do these days. That's what he  
5 says.

6 Now, think about that. What's happened now, he's  
7 posted some blurred photos, he's maybe had a night's sleep, and  
8 Mr. Ben Lambert is trying not to engage, trying to de-escalate,  
9 trying to be reasonable. Maybe for once in the miserable life  
10 of this subculture he's actually being reasonable and  
11 restrained. And so, a couple of hours go by that Sunday,  
12 Father's Day afternoon, and then the real crime begins, because  
13 Mr. Cantwell has made a very deliberate, very unprovoked, very  
14 certain decision about a plan that he is going to execute, and  
15 he's posted these blurred photos, and that hasn't gotten too  
16 far, and so now it's time to push "Send" and execute. So, at  
17 4:15 p.m. in rapid succession we get this. We get the insults,  
18 the prediction that, You are going to lose everything you have,  
19 the fact that, The next time I post that photo, again, the  
20 photo he's already put up somewhere else trying to stir Mr.  
21 Lambert into coming to the table, he says, The faces won't be  
22 blurred, and then you're going to start getting unexpected  
23 visitors, another theme of this crime. And he gives him in,  
24 again, rapid succession, 4:45 p.m., 4:45 p.m., 4:47 p.m., maybe  
25 there's a little bit of a candid apology, as only Mr. Cantwell

1 can do, he says, You know, I really know it's not you causing  
2 the trouble, but you're the one who is going to suffer, because  
3 you're the one I can get, a little bit of candor from Mr.  
4 Cantwell.

5 And then two minutes after that what's going on here?  
6 What's actually happening here, If you want to dox Vic, he's a  
7 better target. He sure is. But if you give me fake info, then  
8 he's talking about his wife, Your wife is going to have trouble  
9 sleeping at night until she leaves you and takes your kids away  
10 and we start thinking about a family broken up. That was the  
11 big salvo. That was all the guns firing, and Mr. Cantwell must  
12 have been pretty confident that results would come through, but  
13 actually maybe Mr. Lambert had the children to feed or  
14 something, and all he can say is, What picture are you even  
15 talking about? Because he doesn't even know then. He doesn't  
16 know many hours after this whole thing is started that Mr.  
17 Cantwell's already taken him out with blurred photos on a chat  
18 group with his friends.

19 And so, it takes two hours for Mr. Lambert to come  
20 back, and he's still befuddled and asking questions, and then  
21 he says, What picture are you even talking about? He doesn't  
22 know. And that's 6:37 p.m., and guess who's been waiting,  
23 waiting for two hours almost to fire back? Mr. Lambert is, at  
24 6:37 p.m., and at that very same minute, without a delay,  
25 Mr. Cantwell says, Fuck around, and I'll remind you the hard

1 way. And so, Mr. Lambert may be figuring out Peach took a  
2 picture that you posted, and he responds 6:39, two minutes  
3 later, As a matter of fact, I don't, and the threat and then  
4 more silence, and then he says, Give me Vic, it's your only  
5 out. I'm going to have to prove my seriousness.

6 Mr. Cantwell at 6:37 p.m. was sitting by his computer  
7 ready to fire back. He was executing a plan that he'd laid out  
8 at 4:45 p.m., and he was probably kind of frustrated he hadn't  
9 heard anything. And now he says that the threat against Mrs.  
10 Lambert was just sort of, just sort of a throwaway, and that  
11 talking about Vic had nothing to do with that. Does that make  
12 any sense? This is a campaign that's been going on since the  
13 previous night, and this is a campaign whose purpose he has  
14 already clearly announced that he is doxing Vic, and now he's  
15 saying the only thing he can say, which is, Well, actually,  
16 when I talked about f-ing the wife, that didn't have anything  
17 to do with this. Do you believe that?

18 All right. So, what are the defenses here? One  
19 defense is that Benjamin Lambert is a liar, and he is a lot of  
20 things, but what is he lying about? What is Benjamin Lambert  
21 lying about? Well, think about that. What we know about  
22 Benjamin Lambert is that he said from the beginning, You know  
23 that I had stopped bothering the guy, and today even Mr.  
24 Cantwell admits, For three months he hadn't been bothering me,  
25 and his own messages acknowledge, You're not the one who's

1 causing the trouble. And so, that's true. And then he says,  
2 You know, I tried to de-escalate and to reason with this guy,  
3 and that's true, and that's true because, in part, you can see  
4 the threat.

5 And one of the most important pieces of evidence in  
6 this case is the quiet and the silence of Ben Lambert in the  
7 middle of this, because what the defendant desperately wants  
8 you to think is that we in the Bowl Patrol world and the  
9 alt-right, what we love to do is engage in horrible invective  
10 against each other, we're entertained endlessly by stupid stuff  
11 where we throw insults and joke about violence, and that's what  
12 we love in this world, and there's probably some truth to that.

13 But on this occasion, on this weekend between these  
14 two guys, when Mr. Cantwell opens fire, Ben Lambert draws back.  
15 He almost goes into a shell, and he does eventually write the  
16 usual stuff about, I forget what horrible words, but look at  
17 the time. It takes him 24 hours to say anything to  
18 Mr. Cantwell that would give a rise to anyone, that's  
19 insulting, that's fighting back. And, remember, Paul Nehlen  
20 had told him, At some point you've got to stand up to a bully,  
21 and that makes sense, too. But Mr. Lambert tells you, I didn't  
22 take this -- I wasn't trying to fight this guy. I was trying  
23 to de-escalate. And the fact that he holds his fire for so  
24 long shows just how seriously he did take this. And then he  
25 did write drafts of a possible response, and he did call Paul



1 Nehlen, a guy he admired, for his advice and tells him,  
2 Cantwell's insane, and he asks him what he should do.

3 And then he did something else at the end of all this.  
4 He posts the exchange on the BowlCast. Well, that's kind of a  
5 strange thing to do, but it's not that strange in that world.  
6 You can't go to the feds. It's not a good thing to talk to the  
7 cops. But for a little security one thing you want to do is  
8 make sure your community knows about that. You don't go to law  
9 enforcement, but you make sure the community is aware, and  
10 that's what he did. And then he warned his wife about a visit  
11 from CPS. That took a risk. And he did consider calling law  
12 enforcement, because he was expecting a call to CPS, and he  
13 wrote his lawyer for advice about that, and he called in to the  
14 show on June 19th, not to prank, but to try to stand up to a  
15 bully. He wasn't making some voice there. He was actually  
16 talking to Chris Cantwell: I really appreciated that you put  
17 photos of my wife and kids, until he cuts him off and pretends  
18 to everyone nothing just happened, there's nothing to see  
19 there. And then he wrote a full account of what had happened,  
20 and he posted it, and then he walked away. He never made  
21 another BowlCast. He's back in Missouri at the first day of a  
22 new job, and the FBI comes to see him, and the first thing he  
23 says is, Is this about Cantwell?

24 What's he lying about? Where in this story is Ben  
25 Lambert lying about something? He's not.

1           And so, the other defense really, and the only other  
2     defense, is the rape is not a serious threat. The defense says  
3     the lines are blurred, the lines are blurred. What is a  
4     threat? The Court will tell you a threat is a serious  
5     statement expressing an intent to injure another person, which  
6     under the circumstances would cause apprehension in a  
7     reasonable person. It's not necessary that the defendant  
8     actually intend to carry out the threat. What he has to do is  
9     intend to issue a threat.

10           Well, look at this threat. It was private, it was  
11    confidential, there's no humor, there's no one listening,  
12    there's no entertainment value. Its only purpose is for its  
13    effects on Ben Lambert. The threat is accompanied with some  
14    effort by other stuff, namely photographs of the wife and the  
15    children back home and the residential address. Take me  
16    seriously, because I'm looking at a picture of your wife. And  
17    the threat's repeated. It isn't said once. It's said twice.  
18    We're talking about incel listeners. And the threat is, we  
19    always talk about context in this case, the threat is part of  
20    all of this; it's in the context of a very serious and  
21    sustained effort to get Vic Mackey's information. Why would  
22    all of that be an obvious, serious effort to get through  
23    extortion the information he so desperately wants, but in the  
24    middle of it there's something that it's kind of a throwaway,  
25    it means nothing, we all laugh about it now.

1           And it's also a threat that's accompanied by two other  
2       threats that are both serious and real and are actually acted  
3       upon, a threat to dox and a threat to call CPS, and it's a  
4       threat that Mr. Cantwell, himself, took seriously enough to  
5       make screenshots of everything and save on his devices and have  
6       right there on his computer, while telling the law enforcement  
7       that, I don't have any copies of all of that. And it's a  
8       threat that, when Mr. Cantwell talked about it, he admitted  
9       making the threats, but he never claimed then that he was just  
10      joking or talking trash.

11           Is that threat anything other than serious? Is it  
12      something -- if you're the husband of that mother, and you're  
13      looking at a picture of her and your little children, is that  
14      something that would cause apprehension in a reasonable person?  
15      Of course it would. And when the defense says, Oh, the lines  
16      are blurred here, what I say back is, if there's anything  
17      that's emerged from all of this, is that, even in this awful  
18      world there is a very clear line between all that trash and a  
19      threat on someone's wife and kids, and that line was crossed,  
20      and Mr. Cantwell knows it.

21           I want to emphasize one other thing, and that is that  
22      provocation is not a defense. You'll hear from the Court that  
23      it is not a way to negate criminal liability, for you to say,  
24      Oh, it was pretty bad, the Bowl Patrol did bad things, and so  
25      there was provocation, and it's an excuse. It's not an excuse.

1           Retaliation is not a defense. Taking the law in your  
2           own hands is not a defense. And think about that. How could  
3           it be any other way?

4           This is not the first time that a victim has done bad  
5           things like being a troll and still be a victim, and it's not  
6           the first time that a defendant has committed a crime against  
7           someone he didn't like. There's always another side to a  
8           story. But what the law says is you've got to cut through that  
9           and say what are the elements of the crime and decide whether  
10          those elements are present beyond a reasonable doubt.

11          Ladies and gentlemen, there is no reasonable doubt  
12          here. This was a serious threat that would cause in a  
13          reasonable person apprehension, and there's no question that  
14          this exchange is all about extorting from Ben Lambert, who is  
15          collateral damage in Missouri, a guy who doesn't even matter to  
16          this guy (indicating), extorting from him because he's the one  
17          I can get the information about Vic Mackey, the big prize, and  
18          in an extortion that is very clearly accompanied by a threat to  
19          report a crime and a threat to ruin reputation, because if  
20          you're in the anonymous world of being an awful person on the  
21          internet, the one thing that absolutely threatens you is being  
22          doxed and unmasked.

23          And so, it's very clear that Count One, and Count Two,  
24          and Count Three, when you look at their elements, when you look  
25          at what happened here, they're proved beyond a reasonable

1 doubt; and, provocation or not, there's no question, no serious  
2 question about the result.

3 Ladies and gentlemen, the defendant, Mr. Cantwell, has  
4 had a fair trial. On behalf of the United States and my  
5 partner, Ms. Krasinski, I ask you to return verdicts of guilty  
6 on all counts. Thank you.

7 THE COURT: Thank you, Counsel. We'll take a short  
8 break, and then I will give you the instructions, and then  
9 you'll be good to go. Okay? So, we'll take a short break now.

10 THE CLERK: All rise.

11 (Recess taken from 2:54 p.m. to 3:00 p.m.)

12 THE CLERK: All rise for the Honorable Court.

13 Please remain standing for the jury.

14 (The jury entered the courtroom)

15 THE CLERK: Please be seated. This hearing is back in  
16 session.

17 JURY CHARGE

18 THE COURT: All right. I'm going to instruct you on  
19 the law at this point. I want to let you know I'm going to  
20 read these instructions, because I need to convey the law  
21 precisely to you. You don't need to take notes during this  
22 process, if you don't want to, because you'll have a set of the  
23 instructions with you in the deliberation room, and the way I  
24 write it up, each separate topic has a heading. So, if you  
25 say, Oh, let's find out what the government's burden of proof

1 is, well, there's a section called "Government's Burden of  
2 Proof," or the first charge, there's a section on that and  
3 subsections. So, you can just quickly page through, get to the  
4 instructions, and you'll have them there. Okay? So, feel free  
5 to just sit and listen, if that's what you choose to do.

6 I also tell you that I'm going to just pull this down  
7 a little, because I can't read without my glasses fogging up,  
8 and I'm going to be reading for about 20 minutes to a half an  
9 hour here. So, I'll do that to make sure that I can actually  
10 see what it is that I'm reading to you.

11 Okay. At this stage of the trial it is my duty to  
12 instruct you on the principles of law that you will apply in  
13 deciding this case. It is your duty to follow these  
14 instructions during your deliberations. You should not single  
15 out any one instruction but, instead, apply these instructions  
16 as a whole to the evidence in the case.

17 You are the sole and exclusive judges of the facts.  
18 You must weigh the evidence that has been presented  
19 impartially, without bias, without prejudice and without  
20 sympathy. You must decide what the facts are, what the truth  
21 is, based upon the evidence presented in the case. You will  
22 decide the case by applying the law as I give it to you in  
23 these instructions and the facts as you find them to be from  
24 the evidence.

25 In determining what the facts are and what the truth

1 is, you must necessarily assess the credibility of each witness  
2 and determine what weight you will give to each witness's  
3 testimony. By "credibility" I mean the believability or the  
4 truthfulness of a witness. You should scrutinize all of the  
5 testimony given, the circumstances under which each witness has  
6 testified and every matter in evidence which tends to show  
7 whether a witness is or is not worthy of belief. Consider each  
8 witness's intelligence, motive, state of mind, demeanor and  
9 manner while testifying. Consider the witness's ability to  
10 see, hear or know the matters about which that witness has  
11 testified. Consider whether the witness had a good memory of  
12 what he or she has testified about. Consider whether the  
13 witness had any reason for telling the truth or not telling the  
14 truth, whether the witness had an interest in the outcome of  
15 the case, whether the witness had anything to gain or lose as a  
16 result of his or her testimony, whether the witness had any  
17 friendship, relationship or animosity towards other individuals  
18 involved in the case, and whether the witness's testimony was  
19 consistent or inconsistent with the witness's own testimony and  
20 the testimony of other witnesses. Consider the extent to  
21 which, if any, the testimony of each witness is either  
22 supported or contradicted by other evidence in the case.

23 After assessing the credibility of each witness, you  
24 will assign to the testimony of each witness, both under direct  
25 and cross-examination, such weight as you deem proper.

1           You are not required to believe the testimony of any  
2       witness simply because that witness was under oath. You may  
3       believe or disbelieve all or part of the testimony of any  
4       witness. It is within your province to determine what  
5       testimony is worthy of belief and what testimony may not be  
6       worthy of belief.

7           During the trial you have heard several government  
8       agents testify. You should consider the testimony of a  
9       government agent in the same manner as you consider the  
10      testimony of any other witness in the case. In no event should  
11      you give the testimony of a government agent any more  
12      credibility or any less credibility simply because that witness  
13      is a government agent.

14          The testimony of a witness may be discredited or, as  
15      we sometimes say, impeached by showing that the witness  
16      previously made statements which are different than or  
17      inconsistent with his or her testimony here in court.  
18      Inconsistent or contradictory statements which are made by a  
19      witness outside of court may be considered only to discredit or  
20      impeach the credibility of the witness and not to establish the  
21      truth of those earlier out-of-court statements.

22          You must decide what weight, if any, should be given  
23      to the testimony of a witness who has made prior inconsistent  
24      or contradictory statements. In making this determination, you  
25      may consider whether the witness purposely made a false



1 statement or whether it was an important mistake, whether the  
2 inconsistency concerns an important fact or whether it had to  
3 do with a small detail, whether the witness had an explanation  
4 for the inconsistency, and whether the explanation appealed to  
5 your common sense.

6 If a person is shown to have knowingly testified  
7 falsely concerning any important or material matter, you have a  
8 right to distrust the testimony of such an individual  
9 concerning other matters. You may reject all of the testimony  
10 of that witness or give it such weight or credibility as you  
11 may think it deserves.

12 It is exclusively your duty, based upon all of the  
13 evidence and your own good judgment, to determine whether the  
14 prior statement was inconsistent and, if so, how much, if any,  
15 weight is to be given to the inconsistent statement in  
16 determining whether to believe all or part of the witness's  
17 testimony.

18 The fact that the prosecution is brought in the name  
19 of the United States of America entitles the government to no  
20 greater consideration than that accorded to any other party in  
21 litigation. By the same token, the government is entitled to  
22 no less consideration. All parties, whether the government or  
23 individuals, stand as equals at the bar of justice.

24 The weight of the evidence is not necessarily  
25 determined by the number of witnesses testifying on either

1 side. You'll consider all of the facts and circumstances in  
2 evidence to determine which of the witnesses may be worthy of  
3 belief. You may find the testimony of a small number of  
4 witnesses on a particular issue is more credible than the  
5 testimony of a greater number of witnesses on the other side of  
6 that issue.

7 In reviewing the evidence, you will consider the  
8 quality of the evidence and not the quantity. It is not the  
9 number of witnesses or the quantity of testimony that is  
10 important but the quality of the evidence that has been  
11 produced that is important. You will consider all of the  
12 evidence, no matter which side produced or elicited it, because  
13 there are no property rights in witnesses or in the evidence  
14 that has been presented.

15 During the trial you have heard certain statements,  
16 arguments and remarks from counsel. These are intended to help  
17 you in understanding the evidence and in applying the law to  
18 this case. However, if counsel have made any statements  
19 concerning the evidence that are contrary to your recollection  
20 of the evidence, then you must take your own recollection as to  
21 the evidence. If counsel have made any statements concerning  
22 the law that are contrary to my instructions, you must take the  
23 law from me. You are not to be concerned with the wisdom of  
24 any rule of law. Regardless of any opinion you may have as to  
25 what the law ought to be, it would be a violation of your sworn

1 duty to base a verdict upon any other view of the law than the  
2 law as I give it to you in my instructions.

3 From time to time during the trial counsel have made  
4 objections. This is a proper function to be performed by  
5 counsel on behalf of their respective clients. You should not  
6 concern yourself with the fact that objections have been made  
7 nor with my rulings on those objections. I must rule on  
8 objections, and I have not intended to indicate in any way by  
9 my rulings or what I have said what the verdict should be in  
10 this case. In this case, as in all cases, I'm completely  
11 neutral and impartial. It's up to you to determine whether the  
12 defendant is guilty or not guilty based on the facts as you  
13 find them to be and the law as I give it to you.

14 So, what is evidence? The direct evidence in this  
15 case consists of, one, the sworn testimony of the witnesses,  
16 both on direct and cross-examination, regardless of who may  
17 have called the witness, two, the exhibits which have been  
18 received into evidence, and, three, any facts to which all of  
19 the lawyers have agreed or stipulated.

20 Certain things are not evidence and cannot be  
21 considered by you as evidence. Arguments and statements by  
22 lawyers are not evidence. What they have said in their opening  
23 statements, closing arguments and at other times is intended to  
24 help you interpret the evidence, but it is not evidence. If  
25 the facts as you remember them differ from the way the lawyers

1 have stated them, you must rely on your memory.

2 Questions and objections by lawyers are not evidence.  
3 Attorneys have a duty to their clients to object when they  
4 believe a question is improper under the *Rules of Evidence*.  
5 You should not be influenced by objections or by my rulings on  
6 objections. Testimony that has been excluded or stricken or  
7 that you have been instructed to disregard is not evidence and  
8 must not be considered. Anything you have seen or heard when  
9 court was not in session is not evidence. You are to decide  
10 the case solely on the evidence received at trial.

11 There are two types of evidence which you may properly  
12 consider in deciding whether a defendant is guilty or not  
13 guilty. Direct evidence is the testimony given by a witness  
14 about what that witness has seen, has heard, or has observed or  
15 what the witness knows based on personal knowledge. Direct  
16 evidence also includes any exhibits that have been marked and  
17 any stipulations which have been agreed to by the lawyers for  
18 both sides.

19 Evidence may also be used to prove a fact by  
20 inference, and this is what is sometimes -- this is referred to  
21 as "circumstantial evidence." In other words, from examining  
22 direct evidence you may be able to draw certain inferences  
23 which are reasonable and justified based on your daily  
24 experience and common sense. Such reasonable inferences  
25 constitute circumstantial evidence.

1           The law makes no distinction between the weight to be  
2     given to either direct or circumstantial evidence. It is up to  
3     you to decide how to weigh the evidence in this case. However,  
4     the defendant cannot be found guilty on any crime based on a  
5     hunch or a suspicion, even a strong one, on what is probably  
6     the case. He can only be found guilty if on the direct  
7     evidence and the reasonable inferences you draw from the direct  
8     evidence you are satisfied that he is guilty of the crime  
9     beyond a reasonable doubt.

10           During the trial I may have instructed you that  
11     certain evidence was being admitted for a limited purpose. It  
12     is your duty to follow these instructions during your  
13     deliberations.

14           The fact that an indictment has been returned against  
15     the defendant is not evidence of the defendant's guilt. An  
16     indictment is merely a formal means of accusing an individual  
17     of a crime in order to bring that person to trial. It is you  
18     who will determine whether the defendant is guilty or not  
19     guilty of the offenses charged based on a consideration of all  
20     the evidence presented and the law applicable to the case.  
21     Therefore, you must not consider the indictment in this case as  
22     any evidence of the guilt of the defendant; nor should you draw  
23     any inference from the fact that an indictment has been  
24     returned against him.

25           A defendant, although accused, begins a trial with a

1 clean slate with no evidence against him. The law permits  
2 nothing but the admissible evidence presented before you to be  
3 considered in support of any charge against the defendant. The  
4 presumption of innocence alone is sufficient to acquit the  
5 defendant, unless you are satisfied beyond a reasonable doubt  
6 that the defendant is guilty after a careful and impartial  
7 consideration of all of the evidence in the case. The burden  
8 is always on the government to prove guilt beyond a reasonable  
9 doubt. This burden never shifts to the defendant. The law  
10 does not impose upon a defendant in a criminal case the burden  
11 or duty of calling any witnesses or producing any evidence.

12 If, after careful and impartial consideration of all  
13 of the evidence in this case, you have a reasonable doubt as to  
14 whether the defendant is guilty of any charge, you must find  
15 the defendant not guilty of that charge. If you view the  
16 evidence in the case as reasonably permitting either of two  
17 conclusions, one consistent with innocence and the other  
18 consistent with guilt, you must adopt the conclusion that is  
19 consistent with innocence. You must never find the defendant  
20 guilty based on mere suspicion, conjecture or guess. Rather,  
21 you must decide the case on the evidence that is before you and  
22 on the reasonable inferences that can be drawn from that  
23 evidence.

24 A separate crime is charged in each count of the  
25 indictment. Each count and the evidence pertaining to it

1 should be considered separately. The fact that you may find  
2 the defendant guilty or not guilty of one or more of the  
3 offenses charged should not control your verdict as to any  
4 other offense charged against the defendant. The defendant is  
5 not on trial for any act or conduct not alleged in the  
6 indictment. Neither are you to be concerned with the guilt of  
7 any person or persons not on trial as a defendant in this case.

8 The defendant has pleaded not guilty to each charge in  
9 the indictment. This plea puts at issue each of the essential  
10 elements of the offenses as described in these instructions and  
11 imposes on the government the burden of establishing each of  
12 these elements by proof beyond a reasonable doubt.

13 The indictment in this case contains three counts.  
14 Each count charges the defendant with a separate crime. When  
15 you begin your deliberations, each of you will be provided with  
16 a copy of the indictment containing the counts which are before  
17 you in the case. Remember, with respect to each count in the  
18 indictment the prosecution must prove beyond a reasonable doubt  
19 that each essential element of the count existed in the manner  
20 charged in that count before you may return a verdict of guilty  
21 with respect to that count.

22 You will note that the indictment charges that the  
23 offenses at issue were committed on or about certain dates.  
24 The proof need not establish with certainty the exact date of  
25 an alleged offense when the term "on or about" is used. It's

1 sufficient if the evidence establishes beyond a reasonable  
2 doubt that the offense charged was committed on a date  
3 reasonably near the date alleged, that is, a date reasonably  
4 close in time to the date upon which the offense is alleged to  
5 have occurred.

6 In addition to the elements of each offense charged in  
7 the indictment you must consider with respect to each offense  
8 whether any act in furtherance of the offense was committed in  
9 New Hampshire. In this regard, the government need not prove  
10 that the crime itself was committed in New Hampshire or that  
11 the defendant was present here. Instead, the government need  
12 only prove by a preponderance of the evidence that at least one  
13 act in furtherance of one or more of the charged offenses was  
14 committed in New Hampshire.

15 I want to emphasize everywhere else where I talk about  
16 the burden of proof the burden of proof is on the government to  
17 establish guilt beyond a reasonable doubt. This is the one  
18 section where the burden of proof is by a preponderance rather  
19 than beyond a reasonable doubt.

20 The indictment charges the defendant, Christopher  
21 Cantwell, with one count of Extortionate Interstate  
22 Communications, in violation of 18 United States Code, Section  
23 875(b), one count of Threatening to Injure Property Or  
24 Reputation, in violation of 18 U.S.C. Section 875(d), and one  
25 count of cyberstalking, in violation of 18 U.S.C. Section



1 2261A(2) .

2 The indictment refers to the alleged victim in each  
3 count as "Victim 1." The government asserts that Victim 1 is  
4 Benjamin Lambert. Lambert was also known by the online  
5 pseudonym "Cheddar Mane."

6 Now I'll talk to you about each of the three charges,  
7 one at a time, starting with Count One, Extortionate Interstate  
8 Communications. Count one of the indictment charges that,  
9 quoting now, "On or about June 16th, 2019, within the District  
10 of New Hampshire and elsewhere, the defendant, Christopher  
11 Cantwell, Christopher C. Cantwell, with intent to extort from  
12 Victim 1 a thing of value, namely, personal identifying  
13 information for a man known by the on-line pseudonym 'VM,' and  
14 for the purpose of issuing a threat and with knowledge that the  
15 communications would be viewed as a threat, transmitted a  
16 communication in interstate commerce containing a threat to  
17 injure the person of another."

18 In order to sustain its burden of proof for the crime  
19 of extortionate interstate communication as charged in the  
20 indictment, the government must prove each of the following  
21 elements beyond a reasonable doubt: first, that the defendant  
22 knowingly transmitted a communication in interstate commerce;  
23 second, that the communication contained a threat to injure the  
24 person of another; and, third, that the defendant transmitted  
25 the communication with the intent to extort money or something

1 of value from any person.

2 I will now define several of the terms used in Count  
3 One.

4 To transmit something in interstate commerce means to  
5 send it from a place in one state to a place in another state.  
6 A "threat" in this context is a serious statement expressing an  
7 intent to injure another person, which under the circumstances  
8 would cause apprehension in a reasonable person, as  
9 distinguished from a political statement, idle talk,  
10 exaggeration or something said in a joking manner. It is not  
11 necessary to prove that the defendant actually intended to  
12 carry out the threat.

13 To act with intent to extort means to act with the  
14 intent to obtain something of value from another person with  
15 that person's consent but induced by wrongful use of threatened  
16 force, threatened violence or fear. An intent to extort by  
17 threat also requires that the defendant act with an intent to  
18 threaten.

19 In determining whether the defendant's communication  
20 was sent with the intent to extort, you may consider all of the  
21 circumstances surrounding the making of the communication. For  
22 example, you may consider the language, specificity and  
23 frequency of the threat, the context in which the threat was  
24 made, the relationship between the defendant and the threat  
25 recipient, the recipient's response, and any previous threat

1 made by the defendant and whether you believe the person making  
2 the statement was serious, as distinguished from mere idle or  
3 careless talk, exaggeration or something said in a joking  
4 manner.

5 The term "thing of value" is anything of value. It is  
6 not limited to money or tangible things with an identifiable  
7 price tag.

8 I'll now turn to Count Two, threat to injure property  
9 or reputation. Count Two of the indictment charges that,  
10 "Between on or about June 15, 2019, and on or about June 17,  
11 2019, within the District of New Hampshire and elsewhere, the  
12 defendant, Christopher C. Cantwell, with intent to extort from  
13 Victim 1 a thing of value, namely, personal identifying  
14 information for a man known by the on-line pseudonym 'VM,'  
15 knowingly transmitted in interstate and foreign commerce  
16 communications containing a threat to injure the reputation of  
17 Victim 1 and a threat to accuse Victim 1 of a crime."

18 In order to sustain its burden of proof for the crime  
19 of threat to injure property or reputation as charged in the  
20 indictment, the government must prove each of the following  
21 elements beyond a reasonable doubt: first, that the defendant  
22 knowingly transmitted a communication in interstate commerce;  
23 second, that the communication contained a threat to accuse  
24 another person of a crime or to injure the reputation of  
25 another person; and, third, that the defendant transmitted the

1 communication with intent to extort money or something of value  
2 from any person.

3 With respect to Count Two, the count I'm describing  
4 now, a threat is a serious statement expressing an intent to  
5 accuse another person of a crime or to injure the reputation of  
6 another person. The previous definitions I gave you for  
7 interstate commerce, intent to extort and thing of value also  
8 apply to Count Two.

9 All right. Now I'll talk to you about Count Three,  
10 the cyberstalking charge. Count Three of the indictment  
11 charges that, "Between in or about June 15 and June 17, 2019,  
12 within the District of New Hampshire and elsewhere, the  
13 defendant, Christopher C. Cantwell, with intent to harass and  
14 intimidate Victim 1, did use facilities of interstate and  
15 foreign commerce, including electronic communication services  
16 and telephone facilities, to engage in a course of conduct that  
17 placed Victim 1 in reasonable fear of serious bodily injury to  
18 Victim 1's spouse, and that caused, attempted to cause and  
19 would be reasonably expected to cause substantial emotional  
20 distress to Victim 1 and Victim 1's spouse."

21 In order to sustain its burden of proof for the crime  
22 of cyberstalking as charged in the indictment, the government  
23 must prove each of the following elements beyond a reasonable  
24 doubt: first, the defendant used facilities of interstate  
25 commerce, including an electronic communications service or

1 system; second, the defendant used the electronic communication  
2 service or other facility of interstate commerce to engage in a  
3 course of conduct; third, that the defendant, while engaged in  
4 that course of conduct, acted with intent to harass or  
5 intimidate Victim 1; and, fourth, that the defendant's course  
6 of conduct placed Victim 1 in reasonable fear of serious bodily  
7 injury to his spouse, caused substantial emotional distress to  
8 Victim 1, or would be reasonably expected to cause substantial  
9 emotional distress to either Victim 1 or his spouse.

10 I will now define several of the terms used in Count  
11 Three.

12 "Using facilities of interstate commerce" means  
13 employing or utilizing any method of communication or  
14 transportation between one state and another and includes, for  
15 example, electronic cellular telephone networks, the mail or  
16 the internet.

17 A "course of conduct" in this context is a pattern of  
18 conduct comprised of two or more acts evidencing a continuity  
19 of purpose. You may consider each communication between the  
20 defendant and another person to be a separate act. In order to  
21 find the defendant guilty, you are required to agree  
22 unanimously that the United States has proven beyond a  
23 reasonable doubt that the defendant engaged in a course of  
24 conduct. While you are required to agree unanimously that the  
25 defendant engaged in two or more acts evidencing the continuity

1 of purpose in order to find him guilty of this crime, you are  
2 not required to agree unanimously on which two or more acts  
3 constitute the course of conduct.

4 To find the defendant guilty of the crime charged you  
5 must unanimously agree that the United States has proved beyond  
6 a reasonable doubt, one, the defendant's course of conduct  
7 placed Victim 1 in reasonable fear of serious bodily injury to  
8 his spouse; two, that the defendant's course of conduct caused  
9 substantial emotional distress to Victim 1; or, three, the  
10 defendant's course of conduct would be reasonably expected to  
11 cause substantial emotional distress to either Victim 1 or  
12 Victim 1's spouse. The government must prove only one of the  
13 three means set forth in the statute.

14 "Substantial emotional distress" means mental  
15 distress, mental suffering or mental anguish. It includes  
16 depression, dejection, shame, humiliation, mortification,  
17 shock, indignity, embarrassment, grief, anxiety, worry, fright,  
18 disappointment, nausea, nervousness, as well as physical pain.

19 When considering whether the intended course of  
20 conduct would be reasonably expected to cause substantial  
21 emotional distress to a person, you must consider whether in  
22 light of the evidence presented in this case a reasonable  
23 person in the same or similar circumstances as Victim 1 or  
24 Victim 1's spouse would suffer substantial emotional distress  
25 as a result of the intended course of conduct as defined in

1       these instructions.

2               To act with intent means to act voluntarily and  
3       intelligently, not by ignorance, accident or mistake, and with  
4       the specific intent or purpose of causing a desired result in a  
5       particular individual. It is not enough merely to foresee that  
6       such a result is a likely consequence of repeated  
7       communications. Moreover, a bad motive of some other kind  
8       standing alone is not enough.

9               "Intent to harass" means to act with the specific  
10       intent or purpose of causing an adverse emotional reaction in a  
11       specific person, not merely speech that happens to cause  
12       annoyance or insult.

13               "Intent to intimidate" means to act with the specific  
14       intent or purpose of putting a person in fear or apprehension  
15       of injury inflicted by a particular person.

16               You have heard evidence that Victim 1 and others have  
17       engaged in behavior that disrupted the defendant's live call-in  
18       radio show. You have also heard evidence that Vic Mackey or  
19       others may have engaged in behavior that disrupted the  
20       defendant's website. You may consider such evidence for the  
21       purpose of understanding all of the circumstances surrounding  
22       the making of the communications at issue in this case,  
23       including, for example, the language, specificity and frequency  
24       of the communications, the context surrounding the  
25       communications, the relationship between the defendant and

1 Victim 1, Victim 1's response, any previous communications  
2 between the defendant and Victim 1 and whether you believe the  
3 person making the communication was serious, as distinguished  
4 from mere idle and careless talk, exaggeration or something  
5 said in a joking manner. You may not consider this evidence  
6 for any other purpose.

7 Remember, the defendant cannot be found guilty of any  
8 charge unless the government proves every element of the charge  
9 beyond a reasonable doubt. That burden never switches to the  
10 defendant. If, however, the government proves every element of  
11 a charge beyond a reasonable doubt, evidence of provocation,  
12 justification or self defense does not negate the defendant's  
13 criminal culpability with respect to that charge.

14 The government is not required to prove that the  
15 defendant knew that he was violating the law. Ignorance of the  
16 law is not a defense to the charges alleged in the indictment.

17 The principles of law set forth in these instructions  
18 are intended to guide you in reaching a fair and just result in  
19 this case, which is important to both of the parties. You are  
20 to exercise your judgment and common sense without prejudice,  
21 without sympathy, but with honesty and understanding. You must  
22 be conscientious in your determination of a just result in this  
23 case, because this is your highest duty as officers of this  
24 court.

25 Remember also, the question before you can never be



1 will the government win or lose the case. The government  
2 always wins when justice is done, regardless of whether the  
3 verdict be guilty or not guilty.

4 When you've considered and weighed all of the  
5 evidence, you must make one of the following findings with  
6 respect to each count: If you have a reasonable doubt as to  
7 whether the government has proved any one or more of the  
8 essential elements of the crime charged, it is your duty to  
9 find the defendant not guilty. If you find the government has  
10 proved all of the essential elements of the crime charged  
11 beyond a reasonable doubt, then you may find the defendant  
12 guilty.

13 The punishment provided by law for the offense charged  
14 in the indictment is exclusively my responsibility and should  
15 never be considered by you in any way in arriving at an  
16 impartial verdict.

17 When you retire, you should elect one member of the  
18 jury as your foreperson. That individual will act very much  
19 like the chairman of a committee, seeing to it that the  
20 deliberations are conducted in an orderly fashion and that each  
21 juror has a full and fair opportunity to express his or her  
22 views, positions and arguments on the evidence and on the law.  
23 The verdict must represent the considered judgment of each  
24 juror. In order to return a verdict, it is necessary that each  
25 juror agree thereto. Your verdict must be unanimous as to each

1 count. It is your duty as jurors to consult with one another  
2 and to deliberate with a view to reaching an agreement, if you  
3 can do so without violence to individual judgment. Each of you  
4 must decide the case for yourselves but only after an impartial  
5 consideration of the evidence in the case with your fellow  
6 jurors. During your deliberations, do not hesitate to  
7 reexamine your own views and to change your opinion, if  
8 convinced it is erroneous; but do not surrender your honest  
9 conviction as to the weight or effect of the evidence solely  
10 because of the opinion of your fellow jurors or merely for the  
11 purpose of returning a verdict.

12 Always remember you are not partisans, you are judges,  
13 judges of the facts. Your sole interest is to seek the truth  
14 from the evidence in the case.

15 If during your deliberations it becomes necessary to  
16 communicate with me, you may do so only in writing, signed by  
17 the foreperson or by one or more members of the jury. Give  
18 that note to the Marshal, and he will bring it to my attention.  
19 No member of the jury should ever attempt to communicate with  
20 me except by a signed writing, and I will communicate with you  
21 on anything concerning the case either in writing or orally in  
22 the courtroom.

23 Remember, you are not to tell anyone, including me,  
24 how the jury stands numerically or otherwise on the matters you  
25 are deciding until after you have reached a unanimous verdict

1 or have been discharged.

2 Nothing said in these instructions is intended to  
3 suggest or to convey in any way or manner what your verdict  
4 should be. The verdict is your sole and exclusive  
5 responsibility.

6 When you have arrived at a verdict, notify the  
7 Marshal, and you will be returned to the courtroom where the  
8 foreperson will render the verdicts orally.

9 I need to speak on the headsets with counsel just  
10 briefly.

11 (SIDEBAR CONFERENCE AS FOLLOWS):

12 THE COURT: I want to note for the record that the  
13 defendant has objected to my provocation instruction. The  
14 defendant has argued that, even with the suggested changes,  
15 that I should not give any provocation instruction, and that  
16 objection is preserved for purposes of appeal.

17 MR. LEVIN: Thank you, your Honor.

18 THE COURT: Are there any other objections that anyone  
19 has to the proposed charge?

20 MR. LEVIN: No, your Honor.

21 THE COURT: Anything from the government?

22 MR. DAVIS: No.

23 THE COURT: No?

24 MS. KRASINSKI: No.

25 THE COURT: Okay. Thank you.

1 (END OF SIDEBAR CONFERENCE)

2 THE COURT: All right. We're almost done. I want to  
3 tell you that you will have the instructions, you will have the  
4 indictment, you will have a verdict form, and there is an  
5 answer that I ask you to fill in with respect to each of the  
6 three charges, and it asks you to state whether the defendant  
7 is guilty or not guilty of each of the three charges. So, fill  
8 out the entire form, have the foreperson sign and date it, and  
9 then you knock on the door when you've reached a verdict, and  
10 the security officer will inform us, and we'll bring you into  
11 the courtroom to render the verdict orally.

12 You also will have access to the exhibits. My very  
13 experienced case managers know this better than I. But you'll  
14 give them some instruction on how to operate the system? So,  
15 you'll be able to call up exhibits on the screen the same way  
16 the lawyers have, so you'll be able to look at those, if you  
17 choose.

18 With that said, the only thing left is to swear the  
19 Court Security Officer. Oh, alternates. Okay.

20 This is always an unfortunate thing for me, that we  
21 impanel more than the number of jurors that we need for a  
22 trial. We started with 14. We lost two early in the trial.  
23 We still have two more than we need, and those two jurors are  
24 alternates, and, unfortunately, despite your sacrifice of  
25 sitting through the trial, you're not going to be able to

1 participate in the deliberations, and those alternates are --  
2 do you know?

3 THE CLERK: 13 and 14.

4 THE COURT: Juror Numbers 13 and 14.

5 THE CLERK: Oh, 15 and 14. I'm sorry.

6 THE COURT: 15 and 14. Okay. So, Jurors 15 and 14,  
7 I'm going to excuse you in a moment. You can pick up your  
8 things and head out, but I'm going to ask you not to be  
9 released from your oath at this point. You can't discuss the  
10 case with anyone else, but also don't expose yourself to any  
11 discussions of the case in the media. Don't discuss the case  
12 with anybody. I will have the Clerk call you as soon as the  
13 jury reaches a verdict. Once the verdict is reached, then you  
14 are released from your oath, and you can do anything you want  
15 to do with respect to the case. But I can't let you  
16 participate. You're free to get your stuff and head home, and  
17 we'll contact you when a verdict is reached. And I do want to  
18 thank you for your service, particularly in this difficult  
19 time, sitting around all day with a mask on waiting for me to  
20 get to you. It's a real sacrifice, and I appreciate it. I  
21 want to thank you for your service, but you are discharged but  
22 still subject to your oath until released by the Clerk.

23 Now we can administer the oath to the Court Security  
24 Officer.

25 THE CLERK: Please raise your right hand. Do you

1 solemnly swear that you will keep this jury together in their  
2 room provided for them, that you will separate them from  
3 others, that you will guard the secrecy of their deliberations,  
4 that you will not communicate with them yourself, nor permit  
5 any other person to do so unless directed by the Court, and  
6 that you will not ask the results of their deliberation until  
7 the verdict has been returned in open court, so help you God?

8 THE COURT SECURITY OFFICER: I do.

9 THE CLERK: Thank you.

10 THE COURT: Can I see the headset for just a moment?

11 (SIDEBAR CONFERENCE AS FOLLOWS):

12 THE COURT: Mr. Levin, you had previously indicated to  
13 me that you were likely to render an objection to my statement  
14 that the facts comprising the course of conduct need not be  
15 unanimously agreed upon, and I want to be sure that, unless  
16 you're prepared to abandon that objection --

17 MR. LEVIN: We abandon that, your Honor.

18 THE COURT: You do abandon it?

19 MR. LEVIN: Yeah.

20 THE COURT: Okay. Thank you. I just didn't want to  
21 let it go by by inadvertence.

22 MR. LEVIN: Thank you.

23 (END OF SIDEBAR CONFERENCE)

24 THE COURT: All right. Is there anything else?

25 THE CLERK: All rise for the jury.

1 (The jury exited the courtroom)

2 THE COURT: So, I would just ask the parties to sit  
3 with the case managers and ensure that the JERS system has in  
4 everything admitted and nothing that hasn't been admitted so  
5 that you are both satisfied with what the exhibits are that  
6 will be going to the jury. And with that, if somebody can  
7 remain in the courthouse. If we get to the point where I  
8 excuse the jury for the evening, I'll notify you and -- the  
9 government can go back to their offices, but just be available  
10 in the event that we should get a verdict.

11 THE CLERK: Can you please write down your cell phone  
12 numbers for me. Thank you.

13 (Recess taken from 3:41 p.m. to 5:32 p.m.)

14 THE CLERK: All rise for the Honorable Court.

15 (The jury entered the courtroom)

16 THE CLERK: Please be seated.

17 THE COURT: Okay, folks. So, I want you to take the  
18 weekend off, okay? That means don't go out and try to  
19 investigate the case. Don't even be thinking about the case.  
20 You should do your deliberating with other jurors here in the  
21 courtroom, so I don't want you to be wasting any time and  
22 energy this weekend on this case. The following instructions  
23 that I've given you in the past I want to reemphasize how  
24 important it is now. I've discharged the alternates. You're  
25 in the middle of deliberation. You must not expose yourself to

1 any discussions of the case in the media. You must not let  
2 anybody talk to you about this case. So, don't watch any local  
3 news, don't listen to any local radio, don't read any local  
4 newspapers, don't go out and do any internet searches where  
5 something could pop up and you could potentially see something  
6 that would be a problem. It's very, very important that you do  
7 that this weekend. So, keep my general instructions in mind,  
8 have a nice, enjoyable, relaxing weekend where you're not  
9 thinking about this case, and then come in on Monday at 9:00  
10 and resume your deliberations. Okay, everybody go and have a  
11 good weekend.

12 THE CLERK: All rise.

13 (The jury exited the courtroom)

14 THE COURT: Each side have a representative here  
15 Monday at 9:00.

16 MR. LEVIN: Thank you, your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, the proceedings adjourned at 5:34 p.m.)  
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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of the within proceedings.

Date: 5/17/21

/s/ Brenda K. Hancock  
Brenda K. Hancock, RMR, CRR  
Official Court Reporter